

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 5TH DECEMBER 2007 / 14TH AGRAHAYANA 1929

WP(C).No. 28031 of 2007(K)

IA 813/07 in OS.23/2002 of SUB COURT,KATTAPPANA

.....

PETITIONER:

M.BALAKRISHNAN, AGED 53 YEARS,
S/O.MUMMOORTHY CHETTIAR,DOOR NO.176/13,
PILLAYARKOIL STREET,THEVARAM POST,
UTHAMAPALAYAM TALU, THENI DISTRICT,TAMILNADU.

BY ADV. SRI.K.K.CHANDRAN PILLAI
SRI.A.S.SAJUSH PAUL

RESPONDENT:

DHANPAL RAJ,S/O. RAMASWAMY,
RESIDING AT DOOR NO.14,
SUPPANSHETTY STREET, THENI P.O.,
THENI TALUK,THENI DISTRICT, TAMILNADU.

BY ADV. SRI.B.JAYASANKAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 05/12/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WP(C) 28031/07

Appendix

Petitioner's Exts:

Ext.P1 true copy of written statement in O.S.No.23/2002 dated 10.9.2002 on the file of the sub Court, Kattappana.

Ext.P2 true copy of petition for amendment of written statement along with affidavit in IA 1338/03 in OS 23/2002 on the file of the Sub Court, Kattapana.

Ext.P3 Copy of judgment dated 30.9.2005 in F.A.O. 191 and 192/2005 of this Hon'ble Court.

Ext.P4 true copy of petition dated 2.8.2007 along with affidavit in IA 813/07 in OS 23/02 on the file of the Munsiff's Court, Kattappana.

Ext.P5 true copy of objection dated 2.8.07 in I.A. 813/07 in OS 23/2002 on the file of the Sub Court, Kattappana.

Ext.P6 true copy of order dated 10.8.2007 in IAS 813/07 in OS 23/2002 on the file of the Sub Court, Kattappana.

M.N.Krishnan, J.

=====

W.P(C).No.28031 of 2007

=====

Dated this the 5th day of December, 2007.

JUDGMENT

This Writ Petition is filed against the order of the Subordinate Judge, Kattappana in I.A.No.813 of 2007 in O.S.No.23 of 2002. It was an application filed for amendment of the written statement contending for the position that the cause of action had arisen within the jurisdiction of the Tamil Nadu courts and therefore, the court at Kattappana does not have territorial jurisdiction to try the case.

2. Learned counsel for the writ petitioner submitted before me that the suit is based on a promissory note and after the appearance of the parties, the defendant filed written statement and issues were framed. Thereafter amendment of the written statement was sought for, which was allowed and the suit was listed. The suit was decreed ex parte. Without any objection, the ex parte decree was set aside and again there was inclusion

of the suit in the list and ultimately a direction was given by this Court to dispose of the matter within the time frame. It is at that stage the application for amendment of the written statement was filed.

3. The first and foremost thing which has to be born in mind is that there must be bonafides in an application for amendment of the plaint or written statement. The suit is based on a promissory note and the defendant with both his eyes open entered appearance and filed written statement and does not raise any plea of territorial jurisdiction. But in a later occasion files an application for amendment of some other aspects, which was allowed. The suit was decreed ex parte once and when it is posted for trial an application was made challenging the territorial jurisdiction. I feel that unless there are sufficient and cogent reasons such an application shall not be allowed because it will result in serious injustice.

4. I am also conscious that the Apex Court has held that in allowing amendments liberal approach should be adopted. But the Apex Court has very well cautioned of the fact that the courts must be careful and it should see that no substantial injustice is

done to the other side. Here, the suit is of the year 2002 and the litigation has got prolonged upto 2007 and there had been various proceedings including the amendment of the written statement at one stage and now when the matter is listed an attempt was made to raise the issue regarding the territorial jurisdiction. I feel that there is no bonafides in such an attempt and therefore it cannot be entertained. The intention is to protract which cannot be entertained.

Therefore, I set aside the order of the court below and dismiss the application for amendment. Writ Petition is allowed.

M.N.Krishnan,
Judge.